

EXHIBIT 9



Information, Guidance and Training on the Americans with Disabilities Act



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The ADA and Face Mask Policies

Updated: 8/27/2021

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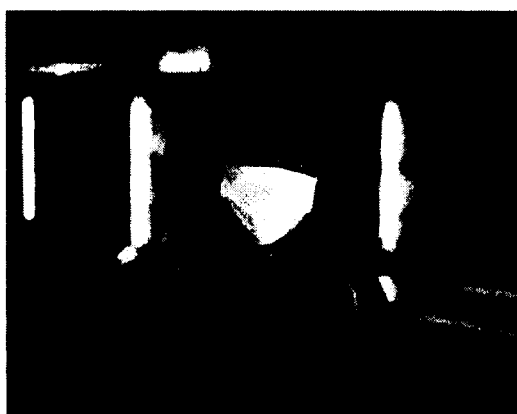
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Introduction

The COVID-19 pandemic has changed our world in many ways. People with disabilities, people with chronic health conditions such as heart disease, lung disease, and diabetes, and people over the age 60, are at a higher risk of becoming infected and more likely to become seriously ill. Safety measures such as social distancing, vaccines, respiratory etiquette, and the wearing of face masks or cloth face coverings are our first line of defense to keep people safe from severe illness. ^[44]

Note: In this document, the term "face mask" will be used for both face masks and cloth face coverings.



Wearing a face mask is one important way to slow the spread of COVID-19. ^[45]

On July 27, 2021, the Centers for Disease Control and Prevention (CDC) updated its guidance on face masks. The CDC recommends that face masks be worn by everyone, regardless of vaccination status, in areas of substantial and high transmission. Wearing a face mask increases protection from the Delta variant and lessens the chance of spreading it to others. ^{[1][43]} The CDC considers substantial transmission to be 50 to 100 new cases per 100,000 people over a seven-day period. High transmission is 100 or more cases per 100,000 people over seven days or in areas with 8% or higher positive test rates. ^[32]

Additionally, the CDC urges that fully vaccinated people who have compromised immune systems continue to wear a face mask. The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions. ^[33]

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Wearing a face mask may be difficult for some people with a disability. State and local government agencies or private businesses that want customers to use a face mask may have questions and concerns. This fact sheet offers guidance to questions about the issue of face mask policies, reasons why a person with a disability might not be able to wear a face mask, and the legal rights a person has under the Americans with Disabilities Act (ADA).

May a federal, state or local government agency or a business require customers to wear a face mask?

NOTE: CDC Guidance

The information from the Centers for Disease Control and Prevention (CDC) and other authorities has changed as the COVID-19 pandemic evolves and new variants emerge. Therefore, private businesses and government agencies should follow the most current information on maintaining safety by reviewing the [CDC Coronavirus \(COVID-19\) information](https://www.cdc.gov/coronavirus/2019-ncov/faq.html) (cdc.gov).

You can also access more information at:

- [Accessible COVID-19 Resources from CDC guidance](#)

Source: Center for Inclusive Design and Innovation (CIDI)

- [Older Adults and People with Disabilities: COVID-19 Resources](#)

Source: Administration for Community Living (ACL)

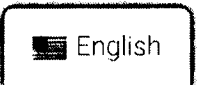
UPDATES

August 27, 2021 – State Mask Mandates

The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions. As of August 27, 2021, ten states (California, Connecticut, Hawaii, Illinois, Louisiana, Nevada, New Mexico, New York, Oregon and Washington), the District of Columbia, and the territory of Puerto Rico have mask mandates in place. Also, on August 27, Oregon became the first state to reimpose a face-covering requirement for people in outdoor public settings, and Illinois' indoor mask order is being expanded to cover vaccinated people, effective August 30.^[33]

August 20, 2021 – Face Masks, Travel and Transportation

The Centers for Disease Control and Prevention (CDC), Transportation Security Administration (TSA), and the U.S. Department of Transportation (DOT) remind people who chose to travel that they are still required to wear a face mask

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buses, trains, and other forms of public transportation traveling into, within, or outside of the United States. This includes all U.S. transportation hubs such as airports and stations for trains and buses. CDC guidance states that fully vaccinated people are safe to travel and can resume travel within the United States.^[46] However, travel outside the United States poses additional risks. Fully vaccinated travelers might be at increased risk for getting and possibly spreading some COVID-19 variants.^[47]

On Friday, August 20, 2021, the Transportation Security Administration (TSA) is extending the face mask requirement for individuals across all transportation networks throughout the United States, through January 18, 2022. The transportation network includes airports, onboard commercial aircraft, on over-the-road buses, and on commuter bus and rail systems.^[48]


July 27, 2021 – Centers for Disease Control (CDC) Interim Public Health Recommendations for Fully Vaccinated People

On July 27, 2021, the Centers for Disease Control and Prevention (CDC) updated its guidance on face masks for fully vaccinated people. The CDC recommends that face masks be worn by everyone, regardless of vaccination status.^[1] The guidance specifically states that a fully vaccinated person should “wear a mask indoors in public if you are in an area of substantial or high transmission.”^[32]

CDC continues to urge people with compromised immune systems and people who live in households with people who have compromised immune systems to wear masks. The CDC recommends that fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 infection be tested 3-5 days after exposure and to wear face masks in indoor public settings for 14 days or until they receive a negative test result. Finally, the CDC recommends that all teachers, staff, students, and school visitors wear masks in school settings, regardless of vaccination status.^[42]

July 19, 2021 – American Academy of Pediatrics (AAP) COVID-19 Guidance for Safe Schools

On July 19, 2021, the American Academy of Pediatrics (AAP), the leading pediatrics organization in the United States, issued a face mask recommendation for schools that are re-opening this fall. The AAP advises that all staff and students over the age of 2 wear face masks when at school unless prohibited by a medical or developmental condition. The AAP guidance also strongly encourages all e

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individuals to receive the COVID-19 vaccine. Schools are urged to provide available and accessible vaccine resources for the whole community.

AAP endorsed the guidance from the Centers for Disease Control (CDC) that schools carry out multiple prevention strategies including social distancing, face masks, handwashing, quarantining, cleaning, disinfections, screening testing, building ventilation, and respiratory etiquette. These things help limit the transmission of respiratory pathogens that are airborne or spread by droplets.^[39]

Respiratory Etiquette


- Covering your mouth and nose when coughing or sneezing.
- Using tissues and throwing them away.
- Washing your hands or using hand sanitizer every time you touch your mouth or nose.
- Providing tissues and no-touch trash cans to throw them away
- Offering disposable face masks to customers and employees

The AAP, citing guidance from the World Health Organization (WHO), the United Nations Children's Fund (UNICEF), and the CDC, urges schools to be opened this fall. They state that there is no evidence of significantly increased community transmission by opening schools. The AAP also believes that "remote learning exposed inequities in education, was detrimental to the educational attainment of all students, and exacerbated a mental health crisis among children and adolescents".^[40]

July 9, 2021 – Centers for Disease Control and Prevention (CDC) Guidance for COVID-19 Prevention in K-12 Schools

On July 9, 2021, the Centers for Disease Control and Prevention (CDC) provided guidance that individuals who are not fully vaccinated (age 2 and older) should continue to wear face masks indoors and in crowded settings when physical distancing cannot be maintained. It is recommended that **schools** maintain 3 feet of physical distancing in classrooms. **Schools** should also carry out multiple strategies to prevent the spread of COVID-19. These strategies include: social distancing, face masks, handwashing, screening testing, ventilation, and respiratory etiquette. The CDC emphasized the importance of in-person instruction even when a school cannot implement all prevention strategies.^[38]

June 10, 2021 – Face Masks, Travel and Transportation – Outdoor Areas

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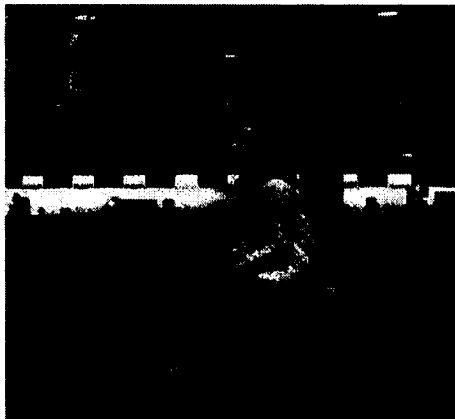

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The Centers for Disease Control and Prevention (CDC) issued guidance that face masks are no longer required in **outdoor areas** where transportation is provided or at transportation hubs. Transportation includes: airplanes, trains, school buses, subways, buses, taxis, ride-shares, trolleys, cable cars, and ships and boats.

Transportation hub is any location where people await, board, or disembark from public transportation. In these cases, private vehicles are not considered transportation.

If transportation sites or transportation hubs have **outdoor areas** (such as on a ferry or an open-air trolley or bus), wearing a face mask is not required while outdoors **unless otherwise required** by the operator, federal, State, tribal, territorial, or local government. However, the CDC continues to recommend wearing of face masks in these areas by people who are not fully vaccinated to protect themselves and others.^[37]



February 1, 2021 – Face Masks, Travel and Transportation

A **federal order took effect requiring travelers to wear face masks**. According to the order from the Centers for Disease Control and Prevention (CDC), face masks must be worn by passengers on trains, buses, trains and subways, airplanes, ships, taxis and ride-share services as well as any other mode of transportation. The order also requires face masks at all transportation hubs including airports, bus terminals, seaports, train stations, and U.S. ports of entry.^[30] This guidance follows President Biden's executive order requiring face masks to be worn on all federal properties.^[31]

March 11, 2020: Centers for Disease Control and Prevention (CDC) Face Mask Recommendation

The **World Health Organization (WHO) declared COVID-19 as a pandemic.**^[2] The Centers for Disease Control and Prevention (CDC) noted that studies have shown that many people who do not have symptoms of COVID-19 can spread the virus to other people. Because it takes four to fourteen days for someone to show symptoms, they also may infect others without knowing it.^[3] This means that the virus can be shared between people who are close to each other. For example, people who are speaking, coughing, or sneezing may spread the virus even if they do not have symptoms.^[4] Therefore, the CDC recommends that people over age two wear a face mask in public or where it can be hard to stay six feet apart from others.^[5]

Court Cases: ADA and Face Masks

Resurrection School v. Hertel

In a ruling handed down on August 23, 2021, the Sixth Circuit Court of Appeals, upheld a district court ruling that refused to block a mask mandate put in place by the Michigan Department of Health and Human Services. Resurrection Catholic Elementary School sued Elizabeth Hertel, the Director of the Michigan Department of Health and Human Services, claiming the face mask mandate was a violation of their rights to free exercise of religion, equal protection, and due process, because face masks hide faces "made in God's image and likeness." Although the mask mandate in Michigan was lifted before this decision, the Sixth Circuit's decision is important in the event a new mask mandate is imposed. The court relied on a rational basis test, saying the state has a legitimate interest to keep the public safe and that the mandate applied to all elementary schools and did not single out religious education institutions.^[49]

Pletcher v. Giant Eagle Inc.

In another case decided on October 23, 2020, in the Federal District Court for the Western District of Pennsylvania, the Court denied a preliminary injunction in the case of Pletcher v. Giant Eagle Inc. If granted, the injunction would have required Giant Eagle Inc. to change its policy of requiring all customers to wear a face mask or other face covering inside their store. In this case, sixty-nine plaintiffs filed a class action suit claiming Giant Eagle Groceries were in violation of Title III of the ADA by denying access to customers who claimed they could not wear a face mask due to their disabilities. In the ruling, U.S. District Judge Nora Barry Fischer determined that the store's face mask policy was a correct interpretation of the Pennsylvania Department of Health's order that face masks are to be worn in public spaces and that those who cannot wear a face mask may instead wear a face shield. Giant Eagle note

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defense that they had in place other modifications to policy and practice consistent with ADA Title III to accommodate customers with disabilities.^[29]

Bunn v. Nike, Inc.

In July 2020, Bunn v. Nike Inc., San Francisco Superior Court, resulted in a class action settlement for customers who are deaf or hard of hearing. The suit claimed that Nike's policy requiring all retail employees to wear face masks violated the ADA. In the settlement, Nike agreed to make the following changes to address the issues for customers who are deaf or hard of hearing: (1) reasonable modifications to policy, practice, and procedure by requiring employees to wear transparent face masks to provide effective communication; (2) providing guidance to employees about accommodating customers; and (3) posting signs at store entrances notifying customers they can request additional assistance.^[41]

Is there a reason a person might not be able to wear a face mask?

The Centers for Disease Control and Prevention (CDC) states that a person who has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance should not wear a face mask or cloth face covering.^[6]

Examples of a person with a disability who might not be able to wear a face mask

- Individuals with asthma, chronic obstructive pulmonary disease (COPD), or other respiratory disabilities may not be able to wear a face mask because of difficult or impaired breathing. People with respiratory disabilities should consult their own medical professional for advice about using face masks. The Centers for Disease Control and Prevention (CDC) also states that anyone who has trouble breathing should not wear a face mask.^[7]



- People with post-traumatic stress disorder (PTSD), claustrophobia (an abnormal fear of being in enclosed or narrow places), severe anxiety^[8] may feel afraid or terrified when wearing a face mask. These individuals may not be able to stay calm or function when wearing a face mask.

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- Some people with autism are sensitive to touch and texture.^[9] Covering the nose and mouth with fabric can cause sensory overload, feelings of panic, and extreme anxiety.
- A person who has cerebral palsy may have difficulty moving the small muscles in the hands, wrists, or fingers. Due to their limited mobility, they may not be able to tie the strings or put the elastic loops of a face mask over the ears. This means that the person may not be able to put on or remove a face mask without assistance.
- A person who uses mouth control devices such as a sip and puff to operate a wheelchair or assistive technology or uses their mouth or tongue to use assistive ventilators may be unable to wear a face mask.

If a person with a disability is unable to wear a face mask, do I still have to allow them in my business or government agency?

The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions.^[33] As of July 20, 2021, eight states (California, Connecticut, Hawaii, Illinois, Nevada, New Mexico, New York, and Washington), the District of Columbia, and the territory of Puerto Rico have mask mandates in place.

These mandates vary by state. For the most part, the mandates require face masks to be worn by people who are unvaccinated and not fully vaccinated inside public spaces, public transportation, workplaces, congregate settings and any situation that where six feet of social separation cannot occur. These mandates also include exemptions for children, people with disabilities or medical conditions, and situations where face masks interfere with effective communication.^[26] These state mandates do not override the consideration of reasonable modifications to policy, practice, and procedure required by the Americans with Disabilities Act (ADA). Many private businesses have also developed policies requiring the use of face masks. The ADA does not have any rules that address the required use of face masks by state and

local governments or private business owners.



If a person with a disability is not able to wear a face mask, state and local government agencies and private businesses must consider **reasonable modifications** to a face mask policy so that the person with the disability can participate in, or benefit from, the programs offered or goods and services that are provided. A reasonable modification means changing policies, practices, and procedures, if needed, to provide goods, services, facilities, privileges, advantages, or accommodations to an individual with a disability.^[10] It is important to focus on how to provide goods or services to a customer with a disability in an equal manner. This can be done by reasonably modifying your policies, practices, or procedures.

The requirement to modify a policy, practice, or procedure **does not include individuals without disabilities**, as they are not protected under the Americans with Disabilities Act (ADA).

Examples of reasonable modifications to a face mask policy

- Allow a person to wear a scarf, loose face covering, or full face shield instead of a face mask.
- Allow customers to order online with curbside pick-up or no contact delivery in a timely manner.
- Allow customers to order by phone with curb-side pick-up or no contact delivery in a timely manner.
- Allow a person to wait in a car for an appointment and enter the building when called or texted.
- Offer appointments by telephone or video calls.

Are there any situations when an agency or business does not have to provide a reasonable modification to the face mask policy?

There are three reasons under the Americans with Disabilities Act (ADA) that a state or local government agency or private business may not have to provide a reasonable modification.

Fundamental Alteration

A state or local government agency or private business may not have to provide a reasonable modification if the modification would change the nature of the service, program, activity, goods, services, or facilities.^{[11][12]}

A fundamental alteration is a change to such a degree that the original program, service, or activity is no longer the same.^[13]

- **Example of a fundamental alternation:** A customer requests that a store deliver her items to her home as a reasonable modification so that she does not have to enter the store. The store does not offer a home delivery. Therefore, the store would not have to grant the request for home delivery since it would be a fundamental alteration of their services.

Undue Burden

A state and local government agency or private business is not required to take any action that it can demonstrate would result in an undue financial or administrative burden. An undue burden is a significant difficulty or expense.^{[14][15]}

- **Example of an undue burden:** A person would like to visit city library when no other customers are present. He requests that staff allow him in 30 minutes before the building opens. This might be an undue burden for the library due to limited staffing.

The requirements for showing an undue financial or administrative burden are different for a state or local government agency and a private business.

State or Local Government Agency and Undue Burden

The head of a state or local government agency or his/her designee are the only ones who can make the decision as to whether a reasonable modification is an undue burden. The decision-maker must provide information in writing with the reasons why the modification is an undue burden.

In determining whether financial and administrative burdens are excessive, all financial resources used to fund the programs, services, or activities of the public entity must be considered. If an action would result in an undue burden, the

local government agency must look for other ways to ensure that individuals with disabilities receive the benefits and services of the program or activity.^[27]

Private Business and Undue Burden

A private business must consider the following things to determine if an action or reasonable modification would result in an undue burden.

1. The nature and cost of the reasonable modification.
2. The overall financial resources of the business making the reasonable modifications; the number of people employed at the business; the effect on expenses and resources of the business; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site.
3. For businesses with multiple sites, consideration is given to the degree of geographic separateness and the administrative or financial relationship of the sites that will make the modification more difficult or expensive.
4. If applicable, the overall financial resources, size, number of employees, and type and location of facilities of the parent corporation or entity (if the business involved in the reasonable modification is part of a larger business).
5. If applicable, an assessment is made of the parent corporation or entity's type of operation, including the structure and functions of the workforce.^[28]

Direct Threat

A state or local government agency or private business may not have to provide a reasonable modification to the face mask policy if the individual with a disability poses a direct threat to the health or safety of others.

A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.^{[16][17]} The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individual assessment that considers the particular activity and the actual abilities

and disabilities of the individual.^{[18][19]}

During a pandemic, state and local government agencies and businesses should use the most up to date information from the Centers for Disease Control and Prevention (CDC), the U.S. Department of Labor (DOL) Occupational Safety and Health Administration (OSHA), and the state public health agencies. Because the pandemic threat to health and safety will vary by region, you should consult your local public health agency for guidance.^[20]

To limit a direct threat from the COVID-19 pandemic, a state or local government agency or private business may impose legitimate safety requirements necessary for safe operation. However, these groups must ensure that their safety requirements are based on real, specific risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.^{[21][22]} These safety requirements must be consistent with the ADA regulations about direct threat and legitimate safety requirements, and consistent with advice from the CDC and public health authorities.

To limit a direct threat and have safety requirements in place to address the COVID-19 pandemic, state and local government agencies and businesses may:

- Develop policies and procedures for prompt identification and isolation of people with symptoms of COVID-19, including employees and customers.
- Offer face masks to employees and customers.
- Enforce social distancing guidelines.
- Inform customers about symptoms of COVID-19 and ask sick customers to minimize contact with workers and other customers until they are healthy again.
- Post signs with COVID-19 information in places that sick customers may visit (e.g., pharmacies, hospitals, public health agencies, grocery stores).
- Include COVID-19 information in automated messages sent when messages are sent to customers via phone messages, text, or email; and/or
- Limit customers in-person access by customers to the buildings operated by a state or local government agency or private business, as appropriate.

How should I respond to a request for a reasonable modification to the face mask policy?

The U.S. Department of Justice (DOJ) issued two settlement agreements that provide guidance on the reasonable modification decision-making process.^{[23][24]}

1. A state or government agency should designate at least one person, and a back-up, who are authorized to receive and review requests for reasonable modifications. The decision-maker for a state or local government agency is the head of the public agency or their designee.^[25] Although not required, private businesses are encouraged to designate a person to receive and review requests for reasonable modifications and make decisions.
2. After receiving a request for a reasonable modification, talk with the individual with a disability to learn why the person needs to modify the face mask policy and to find a solution that meets ADA requirements. Decisions about reasonable modifications should be made in a timely manner.
3. After the discussion, the government agency or private business may:
 1. Agree to the request. In most cases, because the interaction is brief, businesses such as department stores, grocery stores, and pharmacies or government agencies such as the courthouse or drivers' services, will be able to agree to the request. Generally, state and local governments may not ask for documentation of disability as the interactions are brief and in doing so would amount to unequal treatment of people with disabilities.
 2. Deny the request. If a request for modifications is denied, a state or local government agency or private business is encouraged to provide a written statement as to why the request was denied, provide a copy to the person with a disability, and keep a copy on file.
 3. In some unique circumstances where the interaction is not brief (e.g., a college or university that offers students extended residency in dormitories), the school may ask students with non-obvious disabilities for medical documentation about the person's disability that is narrowly tailored and is absolutely necessary to:
 1. Verify that the individual meets the ADA definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities); or
 2. Describe the needed modification; or
 3. Show the relationship between the individual's disability and the need for the requested modification.

Medical Documentation

The U.S. Department of Justice (DOJ) nor other federal agencies with enforcement authority have not provided specific guidance about whether a store can or cannot ask for medical documentation about a person's inability to wear a face mask due to a disability. Generally, guidance from the U.S. Department of Justice has not allowed asking for documentation for accommodations at businesses where interactions are brief, such as grocery stores or pharmacies. Some places such as medical offices or hospitals may need the medical documentation because a person who is not wearing a face mask may infect other people who are sick.

Best Practice Tip

Prepare a list of possible alternatives to a face mask/cloth face covering policy that you can share with people with disabilities who request a reasonable modification to your policy. See: [Examples of reasonable modifications to a face mask policy](#) for examples of policy modifications.

Summary

As the COVID-19 pandemic continues, state and local government agencies and private businesses must make reasonable modifications to allow people with disabilities to access the goods and services they offer. Following ADA requirements for reasonable modifications within federal, state, and local health and safety guidelines will allow you to keep employees and customers safe, reduce new infections, and still provide goods and services to everyone.

Resources

For more about your rights under the Americans with Disabilities Act (ADA) and how they apply to the coronavirus (COVID-19) pandemic: [ADA, Disability & COVID-19 Resources](#) (adacovid19.org)

For additional information on face coverings and the ADA:

- [Fact Sheet: Healthcare & Face Coverings: Reducing Communication Barriers for Deaf and Hard of Hearing Patients](#)
Source: ADA National Network, Northwest ADA Center (adata.org)
- [Fact Sheet: Face Coverings and Businesses: Balancing the ADA with Public Health During COVID-19](#)

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Source: Northwest ADA Center (nwadacenter.org)

- **FAQs: The ADA, Small Business and Face Masks**

Source: Great Plains ADA Center (gpadacenter.org)

- **ADA Today Podcast: COVID-19, Face Mask Policies and ADA Title II and III**

Source: Mid-Atlantic ADA Center (adainfo.org)

- **Webinar Archive: Face Coverings and the ADA – Application of ADA Title III**

Source: ADA Audio Webinar Series: Great Lakes ADA Center

(accessibilityonline.org)

ADA National Network

For questions and training on the Americans with Disabilities Act (ADA), contact your regional ADA center at **1-800-949-4232**

or visit the [national website: adata.org](https://adata.org)

— All calls are confidential. **We do not give medical or legal advice.** [Refer to: [Disclaimer](#)]

Citation

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